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SENSITIVE

DEPARTMENT FOR AF/E JTREADWELL, INR FEHRENREICH

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SUBJECT: TANZANIA SOFA: LIMITS OF TPDF AUTHORITY

¶1. (SBU) SUMMARY: Visiting Africa Command Legal Counsel Colonel Jon Lightner discussed Tanzanian concerns about a proposed Status of Forces Agreement (SOFA) with senior GOT military attorney Brig. Gen. Rwegasira on October 21. The meeting clarified that the Tanzanian People's Defense Forces (TPDF) lacks authority to negotiate a SOFA on the government's behalf. Neither is TPDF authorized to address key differences over reciprocity for Tanzanian military personnel, criminal jurisdiction issues, or the binding nature of a SOFA. Having exhausted the military track for the moment, we will raise the issue with MFA, which has yet to reply to the 2006 and 2008 diplomatic notes, to gauge the possibility of real progress. END SUMMARY.

¶2. (SBU) Background: In November 2006 and July 2008, Mission passed "global SOFA template" language via diplomatic note for GOT consideration. On August 13, 2008, DATT received a "note verbale" from TPDF proposing a Memorandum of Understanding (MOU) on Defence Cooperation and, as an appendix to the MOU, a draft SOFA. In December 2008, Brig. Gen. Rwegasira participated in an inconclusive initial discussion via conference call with State/PM and DOD officers. DATT arranged the October 21 meeting to review U.S. and Tanzanian concerns in greater detail.

¶3. (SBU) Colonel Lightner and Embassy Office of Security Cooperation (OSC) Chief met with Rwegasira in his office Oct. 21. Lightner gave a detailed presentation on the importance of status protections to the USG and outlined the benefits of such an agreement to the GOT. He emphasized that a SOFA is not a presence agreement, but a set of the ground rules for any activity with specific GOT approval. Lightner noted that the language in the USG-proposed SOFA is employed with USG partners worldwide, including those in Africa. In addition, Lightner explained the administrative and technical (A&T) status, as well as the operation of USG claims procedures. He described the operation of the U.S. military justice system and emphasized its applicability worldwide, noting that it has jurisdiction over all crimes committed by our active duty service members. In addition, Lightner highlighted some of the provisions in the TPDF draft SOFA that the USG could potentially work with, such as Article 1 (Entry, Residence and Departure), Article 2 (Military Discipline), Article 6 (Security), and Article 11 (Drivers' Licenses).

¶4. (SBU) Lightner and OSC Chief noted several aspects of the TPDF draft SOFA that would pose problems for the USG. In particular, the TPDF draft proposes full reciprocity for TPDF personnel, meaning that the SOFA would apply fully to Tanzanian military personnel in the U.S. Lightner explained that insistence on reciprocity would significantly reduce the likelihood of achieving a SOFA, since it would require elevating the SOFA to treaty status, requiring Congressional approval. Further, Lightner pointed out that given the nature and number of TPDF activities in the U.S., reciprocity was not necessary.

15. (SBU) The TPDF draft SOFA also suggests that U.S. personnel be subject to the criminal and civil jurisdiction of Tanzania. Lightner pointed out that this provision (Article 5 of the TPDF draft SOFA) runs contrary to USG policy of exercising jurisdiction over its own personnel and seeking A&T status wherever possible. Rwegasira indicated that immunity from prosecution under Tanzanian law would be a significant "sovereignty" issue for the GOT. Regarding A&T status, Rwegasira suggested the GOT would consider granting status to a limited set of "senior leaders," but not all personnel.

16. (SBU) Lightner highlighted several other key provisions that the USG typically seeks in its SOFAs that were missing from the TPDF draft SOFA, such as duty free importation/exportation, tax exemptions, and exemptions from landing and other similar fees. (Note: While not specifically mentioned at the meeting, there are other problems with the draft TPDF SOFA, such as exclusion of DoD contractors, processing of third party claims, and failure to acknowledge professional licenses. End Note.)

17. (SBU) Rwegasira said the GOT preferred to separate the specific defense related activities outlined in the MOU from the SOFA. Rwegasira suggested it would be better to address cooperation and status protection individually, with the SOFA in place before any specific joint activities were proposed or approved.

18. (SBU) Rwegasira noted that several issues discussed, such as professional licenses and tax exemptions, were outside TPDF authority, and that a "broad agreement" as contemplated in the U.S. global SOFA template was more appropriate for the Ministry of

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Foreign Affairs to discuss. In addition, Rwegasira's assistant commented that the GOT Attorney General did not consider the TPDF's proposed MOU and SOFA to be a "binding international agreement." Lightner responded that the U.S. sees SOFAs as binding international obligations. (Note: A related U.S. concern, not addressed during the meeting, is that the MOU - and thus the SOFA - would only be valid for three years under the TPDF proposal.)

19. (SBU) COMMENT: Rwegasira's comments and questions during the meeting made apparent that he now recognizes there are matters in the proposed SOFA that are beyond the competency and authority of the TPDF. Having exhausted the military track for the moment, we will raise the issue with MFA, which has yet to reply to the 2006 and 2008 diplomatic notes, to gauge the possibility of real progress. END COMMENT.

ANDRE